

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**J.B., A MINOR, BY AND THROUGH T.B.,
HIS FATHER AND NEXT FRIEND**

PLAINTIFFS

V.

MADISON COUNTY SCHOOL DISTRICT

DEFENDANT

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW Defendant Madison County School District (the "District") and files its Answers and Affirmative Defenses to Plaintiffs' Complaint as follows:

FIRST DEFENSE

Plaintiffs' Complaint, in whole and/or in part, fails to state a claim upon which relief can be granted. Therefore, Plaintiffs' claims and Complaint should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Rule 12(b)(6) of the Mississippi Rules of Civil Procedure.

SECOND DEFENSE

Defendant asserts all defenses available under Rules 12(b)(1) through 12(b)(7) of the Federal Rules of Civil Procedure and the Mississippi Rules of Civil Procedure.

THIRD DEFENSE

Plaintiffs' claims, in whole and/or in part, may be barred by the applicable statute(s) of limitations, statute(s) of repose, the doctrines of laches, estoppel and waiver, and/or Plaintiffs' failure to meet any other applicable deadlines.

FOURTH DEFENSE

To the extent Plaintiffs have failed to comply with all conditions precedent and with all statutory and/or due process requisites for filing this suit against Defendant, their claims are barred.

FIFTH DEFENSE

While denying that any Defendant took any action against Plaintiffs for which Defendant may be liable, Defendant's actions were, in every sense, lawful, proper and responsible and were done in compliance with adopted policies and procedures. Additionally, Defendant provided written notice to Plaintiffs of the accusations against J.B. and the basis for the accusations, an opportunity to be heard and cross-examine witnesses, an opportunity to appeal the decision from disciplinary hearing to the board of education of the District, and an opportunity to have counsel present at the disciplinary hearing and the appeal.

SIXTH DEFENSE

Defendant denies that Plaintiffs sustained any injury, loss or damages as a result of any act, omission or fault on the part of Madison County School District, its employees, servants, agents or representatives, or anyone else for whom, or anything else for which Defendant may be responsible.

SEVENTH DEFENSE

If any injuries or damages occurred to Plaintiffs as alleged, the claim upon which such is based arises out of the exercise of a discretionary function or duty on the part of the governmental entity and/or employees thereof and as a result thereof Defendant is immune from suit and from liability in this matter.

EIGHTH DEFENSE

Any and all damages sustained by Plaintiffs, all being strictly denied, were directly and proximately caused in whole or in part by acts or omissions of Plaintiffs or persons or entities for which Defendant is neither responsible nor liable, and that all actions of Defendant were, in every sense, lawful, proper and responsible and were lawful and done in compliance with adopted policies and procedures. Defendant specifically pleads the apportionment, contributory negligence, comparative negligence, and other provisions of Miss. Code Ann. §§ 85-5-7 and 11-7-15.

NINTH DEFENSE

Plaintiffs' damages, if any and which are denied, were caused by intervening and/or superseding causes over which Defendant had no control, and is thus not liable.

TENTH DEFENSE

Plaintiffs are not entitled to an award of attorney's fees, costs, and other expenses of litigation as a matter of law.

ELEVENTH DEFENSE

Defendant specifically reserves and/or invokes any and all defenses which are available or to which it is entitled pursuant to any applicable state and/or federal and/or other policies, standards, regulations, laws, statues, authorities, and/or ordinances.

TWELFTH DEFENSE

Any allegation in Plaintiffs' Complaint not expressly admitted herein is denied.

THIRTEENTH DEFENSE

Defendant pleads all applicable defenses in Rules 8 and 12 of the Federal Rules of Civil Procedure. Defendant further asserts any additional affirmative or other defenses that may be justified as additional facts become known.

FOURTEENTH DEFENSE

To the extent the Complaint raises any state law claims governed under the Mississippi Tort Claims Act, Defendant is exempt from liability on those claims pursuant to Miss. Code Ann. § 11-46-1, et seq. Defendant is entitled to all protections, defenses, and immunities of Miss. Code Ann. § 11-46-1, et seq.

FIFTEENTH DEFENSE

Defendant pleads all limitations of liability set forth in Miss. Code Ans. §§ 11-46-7; 11-46-9; 11-46-11; 11-46-13; and 11-46-15.

SIXTEENTH DEFENSE

To the extent that the Complaint raises any state law claims governed under the Mississippi Tort Claims Act, Plaintiffs failed to comply with the notice requirement of Miss. Code Ann. § 11-46-11.

SEVENTEENTH DEFENSE

Plaintiffs have no private right of action to sue under the No Child Left Behind Act.

EIGHTEENTH (ANSWER)

And now, without waiving any of the above and foregoing defenses or any other defenses, Defendant answers Plaintiffs' Complaint, paragraph by paragraph, as follows:

As to the first unnumbered paragraph, the Complaint speaks for itself and requires no response. To the extent a response is required, all allegations are denied.

PARTIES

1. Defendant admits the allegations contained in Paragraph 1.
2. Defendant admits the allegations contained in Paragraph 2.
3. Defendant admits the allegations contained in Paragraph 3.

JURISDICTION

4. Defendant only admits that these statutes confer federal question and civil rights jurisdiction on this Court and that this Court may exercise supplemental jurisdiction over state law claims. All other allegations of Paragraph 4 are denied.

VENUE

5. Defendant only admits that this statute confers venue on this Court. All other allegations of Paragraph 5 are denied

FACTS

6. Defendant admits the allegations contained in Paragraph 6. Defendant affirmatively states that J.B. was on the A/B honor roll, not the A honor roll.

7. Defendant admits the allegations contained in Paragraph 7.

8. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 8; accordingly, those allegations are denied.

9. Defendant denies the allegation regarding the name of the Instagram page. One Instagram page was entitled "Germantown High Whores," as admitted by Plaintiffs' counsel in his February 14, 2014, letter to Superintendent Ronnie McGehee. This Instagram page contained Germantown High School's colors and part of the school's logo. The Instagram page also said that if anyone knew of any whores at Germantown, to let him know and he would post a "pic" of them. Defendant denies that J.B. uploaded only one nude picture. During school hours, J.B.

posted several nude photographs of at least three female Germantown High School students on the Instagram pages he created. Defendant is without sufficient information to admit or deny that J.B. was on a “break” from class when he uploaded the nude picture; accordingly, that allegation is denied. Defendant is without sufficient information to admit or deny the allegation that J.B. used his home computer at his home to create an Instagram page, and according denies that allegation. Defendant affirmatively states that J.B. created or made changes to Instagram pages while at school. Defendant admits that the Instagram pages were created on or around January 24, 2014.

10. Defendant admits all allegations in Paragraph 10, except that Mr. Ted Poore did not recommend expulsion for one year. Defendant admits that Mr. Poore recommended that J.B. be expelled and placed at the Academics Option Center for the remainder of second semester of the 2013-2014 school year and the first semester of the 2014-2015 school year.

11. Defendant admits all allegations in Paragraph 11, except the disciplinary committee did not vote to uphold and approve the recommendation of the principal to expel J.B. from Germantown High School for one year. Defendant admits that the disciplinary committee voted to uphold and approve the recommendation of the principal that J.B. be expelled and placed at the Academics Option Center for the remainder of second semester of the 2013-2014 school year and the first semester of the 2014-2015 school year. Defendant admits the other allegations contained in Paragraph 11.

12. Defendant admits all allegations in Paragraph 12, except the school board did not vote to uphold and approve the recommendation of the principal to expel J.B. from Germantown High School for one year. Defendant admits that the school board voted to uphold and approve the recommendation of the principal that J.B. be expelled and placed at the Academics Option

Center for the remainder of second semester of the 2013-2014 school year and the first semester of the 2014-2015 school year. Defendant admits the other allegations contained in Paragraph 12.

13. Defendant admits the allegations contained in Paragraph 13.

14. Defendant admits that Defendant does not offer JRTOC at the Academic Options Center and that a Spanish I teacher is not assigned to teach at the Academic Options Center. Defendant denies all other allegations contained in Paragraph 14.

15. Defendant admits that J.B. did not report an allegation of an assault to any Madison County School District administration or teacher. Defendant denies all other allegations contained in Paragraph 15.

16. Defendant admits J.B. completed the 2014 spring semester at the alternative school and passed all his classes. Defendant admits J.B. is attending the alternative school for the 2014 fall semester. Additionally, Defendant admits that the art class conflicted with J.B.'s English II class. Defendant also admits that J.B. is enrolled in the following classes for the 2015 fall semester: Geometry, Biology I, Graphic Design, Creative Writing, Learning Strategies Grades 9-12, World History, English II, and Contemporary Health. Defendant denies all other allegations contained in Paragraph 16.

17. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 17; accordingly, those allegations are denied.

18. Defendant denies the allegations contained in Paragraph 18.

COUNT I

Violation of Civil Rights, 42 U.S.C. §§ 1983 and 1988

19. Defendant incorporates herein by reference its responses to allegations contained in all prior paragraphs of the Complaint.

20. Defendant admits the allegations contained in Paragraph 20.

21. Defendant denies the allegations contained in Paragraph 21.

22. Defendant denies the allegations contained in Paragraph 22.

23. Defendant denies the allegations contained in Paragraph 23.

24. Defendant denies the allegations contained in Paragraph 24.

25. Defendant denies the allegations contained in Paragraph 25.

26. Defendant admits that its employees at all relevant times acted within the course and scope of their employment and under color of law and its school board members acted within the scope of their duties and under color of law at all relevant times. Defendant denies all other allegations contained in Paragraph 26.

27. Defendant denies the allegations contained in Paragraph 27.

28. Defendant denies the allegations contained in Paragraph 28.

29. Defendant denies the allegations contained in Paragraph 29.

30. Defendant denies the allegations contained in Paragraph 30.

31. Defendant denies the allegations contained in Paragraph 31, specifically denying that Plaintiffs are entitled to any relief whatsoever in this action.

COUNT I

Violation of First, Eight, and Fourteenth Amendments

32. Defendant incorporates herein by reference its responses to allegations contained in all prior paragraphs of the Complaint.

33. Defendant denies the allegations contained in Paragraph 33.

34. Defendant denies the allegations contained in Paragraph 34 including subparts A-D.

- 35. Defendant denies the allegations contained in Paragraph 35.
- 36. Defendant denies the allegations contained in Paragraph 36.
- 37. Defendant denies the allegations contained in Paragraph 37, specifically denying that Plaintiffs are entitled to any relief whatsoever in this action.

COUNT III

Violations of No Child Left Behind, 20 USC §6301, et. seq.

- 38. Defendant incorporates herein by reference its responses to allegations contained in all prior paragraphs of the Complaint.

- 39. Defendant denies the allegations contained in Paragraph 39.
- 40. Defendant denies the allegations contained in Paragraph 40.
- 41. Defendant denies the allegations contained in Paragraph 41.
- 42. Defendant denies the allegations contained in Paragraph 42.
- 43. Defendant denies the allegations contained in Paragraph 43.
- 44. Defendant denies the allegations contained in Paragraph 44, specifically denying that Plaintiffs are entitled to any relief whatsoever in this action.

COUNT IV

Preliminary and Permanent Injunctive Relief

- 45. Defendant incorporates herein by reference its responses to allegations contained in all prior paragraphs of the Complaint.

- 46. Defendant denies the allegations contained in Paragraph 46.
- 47. Defendant denies the allegations contained in Paragraph 47.
- 48. Defendant denies the allegations contained in Paragraph 48.
- 49. Defendant denies the allegations contained in Paragraph 49.

50. Defendant denies that Plaintiffs are entitled to the relief requested in Paragraph 50 or to any relief whatsoever in this action.

51. Defendant denies that Plaintiffs are entitled to the relief requested in Paragraph 51 or any relief whatsoever in this action.

52. Defendant denies that Plaintiffs are entitled to the relief requested in Paragraph 52 or to any relief whatsoever in this action.

COUNT V

Intentional Infliction of Emotional Distress

53. Defendant incorporates herein by reference its responses to allegations contained in all prior paragraphs of the Complaint.

54. Defendant denies the allegations contained in Paragraph 54.

55. Defendant denies the allegations contained in Paragraph 55.

56. Defendant denies the allegations contained in Paragraph 56.

57. Defendant denies that Plaintiffs are entitled to any relief whatsoever in this action, including the relief requested in Paragraph 57. Defendant denies that Plaintiffs are entitled to a jury trial for those claim(s) governed under the Mississippi Tort Claims Act.

COUNT VI

Attorney's Fees

58. Defendant incorporates herein by reference its responses to allegations contained in all prior paragraphs of the Complaint.

59. Defendant denies that Plaintiffs are entitled to any relief whatsoever in this action, including attorney's fees.

Defendant denies the unnumbered paragraphs of Plaintiffs' complaint beginning with "WHEREFORE PREMISES CONSIDERED ...," specifically denying any and all liability in the premises, further denying that Plaintiffs are entitled to any recovery or relief whatsoever in this action.

NOW, having answered, Defendant Madison County School District prays that this Answer and Affirmative Defenses be deemed good and sufficient and that after due proceedings are had there be a judgment in its favor, with full prejudice and at Plaintiffs' costs.

This the 15th day of October 2014.

Respectfully submitted,

Madison County School District

/s/ Holmes S. Adams

Holmes S. Adams

Its Attorney

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 15th day of October 2014, filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

Mr. John W. Christopher
Attorney at Law
645 Lakeland East Dr., Suite 101
Flowood, MS 39232

/s/ Holmes S. Adams

Holmes S. Adams